

**SUPREME COURT
OF THE
STATE OF CONNECTICUT**

S.C. 20538

**COMMISSION ON HUMAN RIGHTS
AND OPPORTUNITIES,
PLAINTIFF-APPELLANT**

V.

**EDGE FITNESS, LLC, ET AL.,
DEFENDANTS-APPELLEES**

**BRIEF OF THE *AMICI CURIAE*,
JEWISH FEDERATION OF GREATER HARTFORD,
MUSLIM COALITION OF CONNECTICUT, AND OTHER
RELIGIOUS ORGANIZATIONS (THE “INTERFAITH AMICI”)**

**ERICK M. SANDLER
MICHAEL KARPMAN
DAY PITNEY LLP
242 TRUMBULL ST.
HARTFORD, CT 06103-1212
PHONE: (860) 275-0138
FAX: (860) 881-2459
EMAIL: emsandler@daypitney.com
JURIS NO.: 014229**

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STATEMENT OF THE INTEREST OF *AMICI CURIAE*¹

The Jewish Federation of Greater Hartford and the Muslim Coalition of Connecticut submit this *amicus curiae* brief in response to the Court's invitation dated March 2, 2021, on behalf of themselves and the other undersigned religious organizations (collectively, the "Interfaith Amici"). The Jewish Federation of Greater Hartford initiates and supports programs and fuels innovation to ensure a thriving Jewish community locally and around the world. It is the lead voice for the local Jewish community and serves as its central convener, educator, planner, and funder. It advocates for issues related to civil rights and social justice and works to build bridges of understanding across the broader community.

The Muslim Coalition of Connecticut ("MCCT") is a non-profit organization whose mission is to promote American and Islamic values through education, outreach, and community service. Through its programming, MCCT seeks to build bridges between Muslim Americans and people of others faiths and to promote mutual respect and understanding by educating the public about Islam and engaging in honest conversations with fellow citizens.

The Jewish Federation's and MCCT's interests in this case stems from the fact that many members of their respective communities are precluded by their religious beliefs from exercising in the presence of men. The small spaces that Edge Fitness and Club Fitness (the "Gym Defendants") have dedicated to women give these Jewish and Muslim women an opportunity to access professional exercise facilities and enjoy the health and self-empowerment benefits that exercise provides. Should the CHRO prevail, these women

¹ Pursuant to Section 67-7 of the Practice Book, Amici states that no party or party's counsel wrote this brief in whole or in part, or contributed to the cost of preparing and submitting it.

would lose meaningful access to these facilities. Such an outcome is counter to the statutory goals of inclusivity and accommodation and conflicts with statutory and constitutional provisions protecting religious liberty. Both common sense and the principals of statutory interpretation instead suggest an implied gender privacy exception, avoiding such an absurd outcome.

The Jewish Federation of Greater Hartford and MCCT are joined by the following religious organizations, who voice their support for the religious liberty interests of Jewish and Muslim women and the statutory objectives of inclusivity and accommodation:

- ***The Bridgeport Roman Catholic Diocesan Corporation***, a Roman Catholic non-profit, charitable organization which helps to establish and conduct churches, schools, seminaries, ministries to the poor and alienated of society, cemeteries, and other benevolent, charitable religious or missionary work societies or associations throughout Fairfield County;
- ***The Connecticut Council for Interreligious Understanding (CCIU)***, a charitable educational organization that promotes interfaith dialogue, mutual respect, and understanding, through an array of programs and initiatives;
- ***The Federation for Jewish Philanthropy of Upper Fairfield County***, which, guided by the Jewish values of *Tzedakah* (righteous giving), *Chesed* (loving kindness) and *Tikun Olam* (repairing the world), works to meet vital needs at home, in Israel and around the world, and to cultivate a vibrant and inclusive Upper Fairfield County Jewish community, now and for future generations;
- ***The Greater Hartford Rabbinical Association***, which represents the diverse rabbinic leadership of Judaism's many branches in the Greater Hartford area and serves as a rabbinic voice in and for the Jewish community and the Greater Hartford community;
- ***The Hartford Roman Catholic Diocesan Corporation (Archdiocese of Hartford)***, a Roman Catholic non-profit, charitable organization which helps to establish and conduct churches, schools, seminaries, ministries to the poor and alienated of society, cemeteries, and other benevolent, charitable religious or missionary work societies or associations throughout the counties of Hartford, New Haven, and Litchfield;
- ***Hartford Seminary***, a non-denominational graduate school for religious and theological studies committed to the promotion of faithful living in a pluralistic and multi-faith environment;
- ***The Jewish Federation of Greater New Haven***, which unites the diverse Jewish community residing in the 30 towns that comprise the region, with a population of approximately 24,000 Jews, inspiring each person's actions to strengthen Jewish life in Greater New Haven and around the world;

- ***The Jewish Federation of Western Connecticut***, which seeks to be the place, both in real and virtual settings, for thriving Jewish life, Jewish community and Jewish values in Western and Northwestern Connecticut;
- ***The Norwich Roman Catholic Diocesan Corporation***, which represents and serves the nearly 230,000 Catholics living in Middlesex, New London, Tolland, and Windham counties and, through its parishes, schools, and diverse ministries, seeks to address the spiritual, educational, and material needs of the wider community in Eastern Connecticut; and
- ***The Union of Orthodox Jewish Congregations of America***, the largest Orthodox Jewish umbrella organization in the United States, which regularly submits amicus briefs in court cases of importance to its constituents.

For all of the reasons that follow, the Interfaith Amici respectfully urge the Court to recognize the gender privacy exception and affirm the decisions of the CHRO Hearing Officer and the Superior Court.

ARGUMENT

The CHRO asks this Court to interpret a civil rights statute in a way that would undermine the remedial purpose it was intended to serve and harm the very groups it was meant to protect. Should the Court accept this invitation, many Jewish and Muslim women will be effectively denied meaningful access to public gyms, with no discernable benefit to anyone. For the reasons that follow, this Court should instead recognize the gender privacy exception and affirm the decisions of the Superior Court and the CHRO's own Hearing Officer.

I. Many Women of the Jewish and Muslim Faiths Are Precluded by Their Sincerely Held Religious Beliefs from Exercising in Mixed-Gender Settings

A. Modesty in the Jewish Tradition

The Jewish tradition of modesty begins at the very beginning, with the biblical story of Creation. At first, Adam and Eve “were both naked, the man and his wife, and they were not ashamed.” Genesis 2:25.² Of course, it took only a short time on Earth before “the eyes of both of them were opened and they realized that they were naked; and they sewed together a fig leaf and made themselves aprons.” Genesis 3:7. Similarly, the Matriarch Rebecca, upon seeing her intended groom Isaac approach her for the first time, “took the veil and covered herself.” Genesis 24:65. The Jewish faith thus teaches modesty in attire and behavior as a means to rediscover human purity and innocence.

Tzniut, which means modesty or privacy, is the category of Jewish law that has evolved through Talmudic exegesis of the *Tanach*, or Hebrew Bible, beginning with the story of the Garden of Eden. It is recognized as one of the three primary requirements for

² Biblical citations are to *The Tanach* (Stone ed., Artscroll Series 1996).

adherents of the Jewish faith.³ While the principle of *tzniut* guides many aspects of traditional Jewish life, it is most pronounced with respect to interactions between the sexes. In particular, observant Jewish women take care not to expose parts of their skin or their hair to men outside their family. Similarly, observant Jewish women do not exercise in settings with men present, because the positions and movements that are important for promoting good health and fitness can also be misinterpreted as salacious—violating the principles of *tzniut*.⁴

While *tzniut* serves, in part, to protect women from the wandering eyes of men, it is also a source of empowerment. “*Tzniut* in its greater sense is dignity and self-respect, an understanding of one’s intrinsic self-worth. When a woman acts and dresses in a *tzniut* way, she effectively tells the world that she expects to be judged as a human being with skills and capabilities, intellect and emotions, and not as a ‘piece of meat’ that is being displayed to attract the attention of a buyer.”⁵

B. Modesty in the Islamic Tradition

Modesty is also a fundamental precept of Islam. The Prophet Muhammad taught his followers that “*haya* [modesty] is a part of faith.”⁶ He also taught that “every religion has a

³ Micah 6:8 (“What does Hashem require of you but to do justice, to love kindness and to walk humbly with your God?”); see also Talmud, Eruvin 100b (“Even if the Torah had not been given, we would nonetheless have learned modesty from the cat . . .”).

⁴ See, e.g., Eruvin 18b (“And anyone who walks behind a woman in a river [i.e., bathing] . . . has no share in the World-to-Come.”).

⁵ Chaya Sarah Silberberg, *Why Is It Important for a Woman to Dress Modestly?*, Chabad, https://www.chabad.org/library/article_cdo/aid/626355/jewish/Why-is-it-important-to-dress-modestly.htm (last visited Mar. 23, 2021).

⁶ Muhammad Al-Bukhari, *Sahih Al-Bukhari* Vol. 1 Book 2 Hadith 8 (M. Muhsin Khan trans. 1997).

distinctive virtue, and the distinctive virtue of Islam is *haya*.⁷ The Qur'an similarly enjoins Muslims to observe modesty.⁸ It instructs the Prophet Muhammad:

Tell the believing men to lower their eyes and guard their private parts. That is purer for them. Surely God is Aware of whatsoever they do. And tell the believing women to lower their eyes and to guard their private parts, and to not display their adornment except that which is visible thereof.

Qur'an 24:30–31 (The Study Qur'an). The Islamic practice of modesty is often traced back to Mary, the Mother of Jesus, who is one of the most venerated women in the Islamic tradition.⁹

Haya is a multi-faceted concept. It refers, most broadly, to the avoidance of arrogance and vanity in one's behavior and comportment.¹⁰ As part of the practice of *haya*, Muslims are enjoined to dress modestly.¹¹ Accordingly, an important concept in Islamic law is the '*awra*, or "that part of the body the covering of which is required for purposes of public modesty and decency."¹² For women, the '*awra* consists of the entire body, except the face and palms, which must be covered in the presence of unrelated men.¹³ The practice of

⁷ Malik b. Anas, *Al-Muwatta* 740 (Mohammad Fadel & Connell Monette trans. 2019), <http://beta.shariasource.com/documents/3624> (last visited Mar. 30, 2021).

⁸ Shiu-Sian Angel Hsu, *Modesty* in Encyclopedia of the Qur'an (hereinafter Hsu, *Modesty*), http://dx.doi.org/10.1163/1875-3922_q3_EQSIM_00286 (last visited Mar. 30, 2021).

⁹ See, e.g., Roohi Tahir, *Hijab: Spotighting Servitude to God*, Yaqeen Institute (Mar. 25, 2021), <https://yaqeeninstitute.org/roohi-tahir/hijab-spotlighting-servitude-to-god> ("What better example to look up to than that of Maryam (Mary), the mother of Isa (Jesus) She is the best among all women of all time, honored and admired the world over for the sincerity and strength of her faith in the face of tremendous challenge through her servitude to [God]—and its manifestation in her renowned modesty.").

¹⁰ Hsu, *Modesty*.

¹¹ *Id.*

¹² *Id.*

¹³ The '*awra* of a man generally extends from his navel to his knees. *Id.* To avoid exposing their '*awra* in public, many Muslim men wear bathing suits that extend below their knees.

haya also requires Muslims to avoid form-fitting clothing that reveals the intimate details of the human figure.¹⁴

Many Muslim women view the practice of modesty as a source of empowerment. One prominent American Muslim preacher described her adherence to Islamic codes of dress thusly: “I’m not here to be on display. And my body is not for public consumption. I will not be reduced to an object, or a pair of legs to sell shoes. I’m a soul, a mind, a servant of God. My worth is defined by the beauty of my soul, my heart, my moral character.”¹⁵

* * *

Those Jewish and Muslim women who adhere to traditional religious precepts of modesty are precluded from exercising in the presence of men, due to the provocative poses individuals must assume when exercising and the revealing, form-fitting nature of exercise attire. As the Hearing Officer found based on the uncontroverted evidence before her, “some Jewish and Muslim clients need[] an all women’s area because their religions [do] not permit them to utilize a coed facility.” CHRO Hearing Final Decision at 5; see *a/s/o id.* at 3 (“The women’s only space is utilized to serve Muslim and certain Jewish women who are forbidden from exercising in a co-ed environment.”).

II. Religious Liberty Interests and the Statutory Objectives of Inclusivity and Accommodation Suggest an Implied Gender Privacy Exception

The Gym Defendants persuasively argue that both common sense and the principles of statutory interpretation support an implied gender privacy exception to Conn. Gen. Stat. § 46a-64(a)(2) (“Subsection (a)(2)”). The religious liberty interests of Jewish and Muslim

¹⁴ *Modesty*, Oxford Dictionary of Islam, <https://www.oxfordreference.com/view/10.1093/oi/authority.20110803100203573> (last visited Mar. 29, 2021).

¹⁵ Yasmin Mogahed, *A Letter to the Culture that Raised Me*, Virtual Mosque (Feb. 1, 2011), <http://www.virtualmosque.com/ummah/women/hijab-niqab/a-letter-to-the-culture-that-raised-me>.

women and the statutory objectives of inclusivity and accommodation provide further support for interpreting Subsection (a)(2) to provide for such an exception.

This Court should not mechanically apply the language of one subsection of a statute in a manner that would produce absurd results, undermine the evident intent of the legislature, and clash with other statutory and constitutional guarantees. Statutory interpretation begins with, not only the “text of the statute,” but also “its relationship to other statutes.” Conn. Gen. Stat. § 1-2z. If, having considered these sources, the statute is either ambiguous or would “yield absurd or unworkable results,” the Court looks to extratextual sources for guidance, *id.*, including “the legislative policy [the statute] was designed to implement.” *Desrosiers v. Diageo N. Am., Inc.*, 314 Conn. 773, 782 (2014). The Court’s “fundamental objective is to ascertain and give effect to the apparent intent of the legislature.” *Id.* (quoting *Manifold v. Ragaglia*, 272 Conn. 410, 419 (2004)); *see also Sw. Appraisal Grp., LLC v. Adm’r, Unemployment Comp. Act*, 324 Conn. 822, 833 (2017) (A remedial statute “should be liberally construed in favor of its beneficiaries.” (quoting *Standard Oil of Conn., Inc. v. Adm’r, Unemployment Comp. Act*, 320 Conn. 611, 616 (2016))).

Interpreting Subsection (a)(2) to permit no exception for gender privacy would undermine the guarantee of “full and equal accommodation” irrespective of “sex” or “creed” in the provision that immediately precedes it, Section 46a-64(a)(1) (“Subsection (a)(1)”). The small spaces the Gym Defendants have reserved for women enable Jewish and Muslim women who adhere to traditional religious precepts of modesty to meaningfully access these facilities and enjoy the significant health and self-empowerment benefits that exercise provides, fulfilling the promise of “full and equal accommodation” for all

irrespective of sex or creed. Prohibiting the Gym Defendants from maintaining these spaces would deny these women meaningful access to these facilities, with no apparent benefit to men or, indeed, anyone. “It is a ‘fundamental canon of statutory construction that the words of a statute must be read in their context and with a view to their place in the overall statutory scheme.’ A court must therefore interpret the statute ‘as a symmetrical and coherent regulatory scheme and fit, if possible, all parts into an harmonious whole.’” *Food & Drug Admin. v. Brown & Williamson Tobacco Corp.*, 529 U.S. 120, 133 (2000) (citations omitted). Reading Subsection (a)(2) in a way that undermines the objectives of Subsection (a)(1) would be inconsistent with this well-established principle of statutory construction and would produce an absurd result. Conversely, recognizing a gender privacy exception to Subsection (a)(2) harmonizes these provisions.

The mechanical application of the literal language of Subsection (a)(2) would also place it into conflict with the Connecticut Act Concerning Religious Freedom (“ACRF”), Conn. Gen. Stat. § 52-571b. The ACRF “prohibits the state from burdening a person’s exercise of religious freedom under [article first, § 3] of the Connecticut constitution, even if the burden results from a rule of general applicability[,], unless the state can demonstrate that application of the burden to the person (1) is in furtherance of a compelling governmental interest, and (2) is the least restrictive means of furthering that compelling governmental interest” *Gawlik v. Semple*, 197 Conn. App. 83, 123 (2020) (citations omitted), *cert. denied*, 335 Conn. 953 (2020) and *cert. denied*, 2021 WL 1073179 (U.S. 2021).

As discussed above, many Jewish and Muslim women adhere to a religiously grounded understanding of modesty, which precludes them from wearing exercise clothing

and assuming the often provocative poses that exercise requires in the presence of men. The Gym Defendants have *voluntarily* accommodated these and other women with gender privacy concerns by providing a small space dedicated to women, giving these women meaningful access to their facilities and fulfilling the promise of Subsection (a)(1). The CHRO, on the other hand, seeks to enlist the coercive power of the state and the very laws meant to protect historically disadvantaged minorities to *prohibit* the Gym Defendants from accommodating Jewish and Muslim women.

In addition to turning civil rights law on its head, the CHRO's position would put Jewish and Muslim women committed to their religious understanding and practice of modesty to a difficult choice—forgo access to all professional exercise facilities and the attendant health benefits they provide, or violate a tenet of their religion. Put differently, the CHRO's position would have the effect of imposing a penalty on these women's adherence to their religious tenets by effectively depriving them of access to professional gyms. This would undoubtedly burden their exercise of religion, which is only justified under the ACRF when it is the “least restrictive means” of furthering a “compelling governmental interest.” Conn. Gen. Stat. § 52-571b(a), (b). Given that the CHRO has presented no evidence suggesting that eliminating these spaces serves any interest at all, other than the doctrinaire application of the literal language of one subsection of the statute—let alone a “compelling” interest—the burden on the women's “exercise of religion” would be unjustified under the ACRF's framework.

This Court has held that “[t]he legislature is presumed to act in view of existing relevant statutes *and with the intention of creating one consistent body of law.*” *Caulkins v. Petrillo*, 200 Conn. 713, 718 (1986) (emphasis added). Similarly, the legislature has

expressly directed the courts to interpret statutes, “in the first instance,” not only based on “the text of the statute itself,” but also on “its relationship to other statutes.” Conn. Gen. Stat. § 1-2z. This Court should avoid interpreting one civil rights statute in a way that creates a potential violation of another civil rights statute and undermines its objective of protecting religious freedom. Recognizing the gender privacy exception advocated by the Gym Defendants would avoid this absurd outcome.

The CHRO argues that consideration of the ACRF is precluded because no ACRF claim was pleaded or briefed by the Gym Defendants. CHRO Opening Brief at 32–35. The CHRO misapprehends the relevance of the ACRF to this case. Whether or not an ACRF claim or defense has been raised, the Court is not precluded from considering that statute in interpreting Subsection (a)(2). As discussed above, under Section 1-2z and this Court’s precedents, interpreting statutory provisions in light of other statutes is not only permissible—it is required.

It is also “well established that this court has a duty to construe statutes, whenever possible to avoid constitutional infirmities.” *Foley v. State Elections Enf’t Comm’n*, 297 Conn. 764, 780 (2010) (quoting *State v. Cook*, 287 Conn. 237, 245 (2008)). As discussed above, interpreting Subsection (a)(2) to prohibit private gyms from providing small women-only exercise spaces would burden many Jewish and Muslim women’s exercise of religion by forcing them to choose between adhering to the tenets of their religion and accessing and benefitting from professional exercise facilities. In addition to the conflict this creates with the ACRF, it also raises serious constitutional concerns under the Free Exercise Clause of the United States Constitution.

The First Amendment provides that Congress (and, through the Fourteenth Amendment, the States) “shall make no law respecting an establishment of religion, or *prohibiting the free exercise thereof*.” U.S. Const. amend. 1 (emphasis added). The Supreme Court’s decision in *Employment Division, Department of Human Resources v. Smith* permits the enforcement of laws that incidentally burden the exercise of religion, provided that such laws are “neutral” and “generally applicable.” 494 U.S. 872, 879–81, 85 (1990).¹⁶ Here, there are serious doubts whether Subsection (a)(2), which includes several exceptions, satisfies *Smith*’s “general applicability” requirement. *Smith* involved a criminal statute that admitted no exceptions at all, making it a classic example of a “generally applicable” law. By contrast, in *Church of the Lukumi Babalu Aye, Inc. v. City of Hialeah*, the Supreme Court subjected a law that, while neutral on its face, contained numerous exceptions for analogous secular conduct to strict judicial scrutiny, because it was “well below the minimum standard” for general applicability. 508 U.S. 520, 543 (1993). In the absence of further guidance from the Supreme Court, lower courts have differed on the meaning of the general applicability requirement, with some holding that even a single exception can render a legal rule no longer “generally applicable” and thus trigger strict scrutiny. See *Fraternal Order of Police Newark Lodge No. 12 v. City of Newark*, 170 F.3d 359, 365–66 (3d Cir. 1999) (Alito, J.) (applying strict scrutiny to a rule prohibiting police officers from wearing beards because the rule included a secular exception for medical

¹⁶ *Employment Division v. Smith* prompted Congress to enact the Religious Freedom Restoration Act to reverse its effects. Many state legislatures also sought to reverse the effects of *Smith* by passing similar laws, including the ACRF in Connecticut. See *Rweyemamu v. Comm’n on Human Rights & Opportunities*, 98 Conn. App. 646, 661 (2006) (discussing the legislature’s “intent to reverse the effects of the *Smith* case” in enacting the ACRF).

reasons); Douglas Laycock & Steven T. Collis, *Generally Applicable Law and the Free Exercise of Religion*, 95 Neb. L. Rev. 1, 10–22 (2016) (discussing the lower-court split).

In short, because Subsection (a)(2) includes multiple statutory exceptions, its enforcement in a manner that burdens religious practice raises serious constitutional concerns. The Court's duty to avoid such concerns further militates in favor of recognizing a gender privacy exception to Subsection (a)(2).

CONCLUSION

For the foregoing reasons, the Interfaith Amici respectfully submit that the decisions of the Hearing Officer and the Superior Court should be affirmed and the CHRO's appeal dismissed.

Respectfully submitted,

JEWISH FEDERATION OF GREATER
HARTFORD, MUSLIM COALITION OF
CONNECTICUT, & OTHER INTERFAITH
AMICI

By: /s/ Erick M. Sandler

Erick M. Sandler
Day Pitney LLP
242 Trumbull St.
Hartford, CT 06103-1212
Phone: (860) 275-0138
Fax: (860) 881-2459
Email: emsandler@daypitney.com
Juris No.: 014229

Michael Karpman
Day Pitney LLP
One Federal Street, 29th Floor
Boston, MA 02110
Phone: (617) 345 4669
Email: mkarpman@daypitney.com

CERTIFICATION

In accordance with Practice Book § 62-7, I certify that on April 1, 2021, a copy of this electronically submitted Brief has been delivered to the last known e-mail address of each counsel of record for whom an e-mail address has been provided or sent by first class mail, as noted below; that this electronic submission has been redacted or does not contain any names or other personally identifying information that is prohibited from disclosures; that the Brief filed with the Appellate Clerk is a true copy of the Brief that was submitted electronically; that the Brief complies with all provisions of Practice Book § 67-2; and that this document complies with all applicable rules of appellate procedure.

Michael E. Roberts
Human Rights Attorney
CHRO, Legal Division
450 Columbus Blvd., Suite 2
Hartford, CT 06103
michael.e.roberts@ct.gov

James F. Shea
Allison Dearington
Jackson Lewis PC
90 State House Square, 8th Floor
Hartford, CT 06103
james.shea@jacksonlewis.com
allison.dearington@jacksonlewis.com

Mario R. Borelli
Leone, Throwe, Teller & Nagle
33 Connecticut Blvd.
PO Box 280225
East Hartford, CT 06128-0225
mborelli@ltnlaw.com

The Honorable John L. Cordani
Connecticut Superior Court
Judicial District of New Britain
20 Franklin Square
New Britain, CT 06051

/s/ Erick M. Sandler
Erick M. Sandler